

**Ideas and Information for Human Resources Professionals**

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**Compliance*****Agencies Tweak Rules on OTC Drugs, Claims***

More than six months have passed since President Barack Obama signed the health care reform bill into law. A number of provisions are now in effect, and federal agencies are working to clarify lingering questions in the legislation.



One aspect that could have a significant impact on employers and employees -- reimbursement for medical expenses from flexible spending accounts (FSAs), health savings accounts (HSAs), Archer medical savings accounts (MSAs) and health reimbursement arrangements (HRAs) -- has received special attention from the IRS.

In late September, the IRS posted new guidance regarding reimbursement for over-the-counter (OTC) drugs under the Patient Protection and Affordable Care Act (PPACA). According to a report in *PLANSPPONSOR*, the agency states that expenses for OTC drugs will be considered reimbursable on or after January 1, 2011, only if:

1. A prescription is required to obtain the medicine or drug;
2. The item is available as an OTC drug, but an individual has obtained a prescription for it; or
3. The drug is insulin.

The guidance, however, still begs for more clarity, experts say. For instance, many consumers might not understand what constitutes a prescription. According to a report in *Employee Benefit News*, a prescription is defined as "an electronic or written order for a medicine or drug that meets the legal requirements of a prescription in the state in which

the medical expense is incurred, and that is issued by an individual authorized to issue a prescription in that state." In other words, if a doctor simply tells a patient "Take two aspirin," a purchase of OTC aspirin is not reimbursable under PPACA because no formal prescription is issued.

Also, the definition of a "medicine or drug" remains foggy. For instance, the new law still permits reimbursements for some medical supplies and diagnostic devices, such as contact lens solution and blood sugar test kits. However, the recent guidance doesn't give much detail on what actually constitutes a "medicine or drug."

Although many questions remain, attorneys from Alston & Bird suggest employers start communicating what they know now to plan participants and touch base with their third-party administrators (TPAs) and debit card issuers to make sure the regulations will be followed come January 1, 2011. Employers also should create a new process to ensure that every claim for an OTC medicine or drug has a valid prescription number or otherwise satisfies a state's prescription requirements.

#### **More from the DOL**

The Department of Labor (DOL) also recently issued some guidance regarding provisions in PPACA. The DOL relaxed some previous rules on how health care plans handle disputed claims and answered some questions on the expansion of medical coverage to an employee's adult children.

The law allows employees covered under self-insured plans to request a "federal external review" following a claims denial through internal reviews by employers and administrators, according to a report in *Business Insurance*. Previous rules required employers to contract with at least three different independent review organizations and to shift cases among them. In the recent guidance, however, the DOL states that employers do not have to contract directly with the review organizations, but instead can obtain those services through a TPA.

The DOL also clarified a provision that extends an employee's health coverage to his or her adult children up to age 26 without restrictions as of January 1, 2011. The DOL states employers who voluntarily extend benefits beyond adult children (such as nieces, nephews and grandchildren) can continue to impose restrictions or conditions, such as requiring "the individual be a dependent for income tax purposes," according to the *Business Insurance* report.

## **Enrollment Trends**

### ***Employees Turn Their Focus to Benefits***

As enrollment for 2011 calendar-year plans kicks into high gear, a series of studies suggest that employees are changing their attitudes -- and their demands -- about employee benefits.

For 2010 coverages, many employees (45 percent) actively chose their benefits rather than simply defaulting to what they had in the previous year, according to new research by Hewitt Associates. That's the highest number since the group started tracking the data in 2003. Hewitt's researchers note that cost shifting and changes resulting from recent health care reform will make it even more important for employees to take a close look at their benefits and make



the right choices this year.

Not only are employees paying more attention to their benefits, they're asking for more. A new poll by Prudential Financial, Inc., finds that employees want more benefits -- and are willing to pay for them. The survey found that despite pressures created by the recent trend in cost shifting, 20 percent of employees added a new voluntary benefit through their employer in the past year.

Andy Mako, a senior vice president with Prudential, told *Business Wire* that employees are beginning to view voluntary benefits as a cost-effective way to protect their personal and financial health.

Voluntary offerings also can bolster an employer's recruitment power, according to a separate survey by Wellpoint, Inc. Eighty-three percent of polled employees said they have a higher opinion of employers that offer a selection of voluntary benefits than those that don't, according to a report in *PLANSponsor*.

In fact, almost 90 percent said it was important that companies offer a full range of health benefits, including voluntary offerings. Fifty-six percent said it was "very important."

Employees said cost savings (54 percent), greater protection for their families (50 percent) and ease of mind (44 percent) were the top reasons for enrolling in voluntary programs.

## Wellness

### ***Obesity Poses Massive Problem for Employers***

A recent study examining the impact of an obese workforce on companies provides new reasons for employers to consider taking steps to keep their employees fit and healthy.

A new Duke University analysis found that obesity costs U.S. employers a whopping \$73.1 billion per year in health care costs and lost productivity, according to a report posted by ABC News.com.



Surprisingly, direct health care costs weren't the biggest loser for employers with an obese workforce. Obese employees' presenteeism -- defined as the productivity lost when sick employees try to work -- accounted for the biggest drain on employers at \$12.1 billion per year, the study found. In fact, the costs of presenteeism were nearly twice that of medical costs for employers, researchers said.

The study calculated that each male or female worker with a body mass index (BMI) higher than 40 (about 100 pounds overweight) cost employers \$15,500 or \$16,900, respectively.

Despite the growing problem of obesity, few Americans are choosing to improve their diet, according to a separate study published in *The New York Times*. After decades of eat-right campaigns by federal and state governments and stricter dietary guidelines, Americans are still snubbing their vegetables. Only 26 percent of the nation's adults eat vegetables three or more times a day, according to recent research by the Centers for Disease Control and Prevention (CDC).

While these studies paint a bleak picture for America's workforce health, some companies are working hard to make a difference -- and save money -- with company-sponsored

programs.

One example is IBM, which instituted a special 12-week program of health-promoting activities, according to a *HealthDay* report. The company offered \$150 to participate in the program. But they didn't just try to recruit the employee. IBM worked to get entire families enrolled, which ultimately made a big difference in participation.

"Employers spend a lot of time thinking about how to get their employees healthy, and while the employee is an important factor, what about the family?" asked Dee Edington of the University of Michigan and an author of a study that analyzed IBM's efforts. "When you have a sick child, you also have a sick employee. So, if you're going to have a healthy culture, you need to think about having healthy families as well."

In IBM's program, families sat down, made decisions together and turned it into a family project, researchers said.

The result: More than 11,000 employees -- better than half of those that enrolled -- completed the program.

While the IBM case might not offer hard evidence that such programs save money, experts say any effort by employers to improve workforce health -- including focusing on obesity -- can make a positive difference.

"Some weight loss is likely to be associated with some health improvement. . . . It's a continuous scale of weight and health and dollars," said Dr. David Katz, director of the Prevention Research Center at Yale University School of Medicine.

## In Brief

### FLU WHO?

Despite the protection offered by influenza vaccines, many Americans say they don't expect to get a flu shot this coming season, according to a new report. Forty-three percent of adults say they won't get the shot. Also, a third of American mothers said they have no plans to have their children receive the flu shot. According to a recent news release from insurance provider Aetna, the flu shot is a vital weapon against the spread of influenza. People can also protect themselves by:

- Avoiding close contact with people who are sick
- Covering your nose and mouth with a tissue or your sleeve when you cough or sneeze
- Washing your hands regularly with soap and warm water
- Not touching your eyes, nose and mouth

### SPANISH NOTICES

The Department of Labor recently posted a series of health care reform model notices in Spanish. The postings include notices for:

- Health Coverage for Young Adults
- Grandfathered Health Plans
- Patient Protections
- Lifetime Limits
- Adverse Benefit Determination
- Final Internal Adverse Benefit Determination
- Final External Review Decision

Employers can download English and Spanish versions of the notices at <http://www.dol.gov/ebsa>.

[Look under New and Noteworthy section on home page]

## **YOUNG IN LIFE**

Many younger employees are choosing whole life policies over other options, according to a new study by The Guardian Life Insurance Company of America. The survey found that 74 percent of whole life purchasers under the age of 40 opt for whole life because of a desire to be financially secure "as soon as possible." Thirty-five percent also indicated they wanted to pay off their premiums as soon as possible, rather than go the traditional route of paying for the policy over a lifetime.

## **RETIREMENT TWEAKS**

The Small Business Jobs Act of 2010, recently signed by President Barack Obama, contains several benefits-related provisions. They include:

- Changes to the rule that cell phones must meet "certain heightened substantiation requirements and appreciation rules," according to the law firm Jackson Lewis. This opens the door for the IRS to "issue rules of administrative convenience with respect to the taxation of the personal use of employer-provided cell phones."
- A provision that allows those enrolled in Section 457 governmental deferred compensation plans "to treat elective deferrals as Roth contributions, starting in taxable years beginning after 2010," Jackson Lewis writes.
- A provision that allows rollovers from elective deferral plans to Roth accounts, effective for distributions made after the date of enactment.

## **HEALTH COSTS**

Employers can expect benefits cost trends in 2011 to remain similar to 2010, according to a new Segal survey. The research projects a trend of a 10.6 percent for PPO/point of service plans in 2011, compared with 10.5 percent in 2010. Prescription drug trends (retail and mail-order services) are expected to be 9.2 percent - the third year in a row Segal has projected prescription increases below 10 percent.

## **E-PROGRESS**

The number of health care professionals who use electronic prescribing tools has jumped in recent years, according to new data from Surescripts. About 200,000 office-based prescribers - about one-third of all office-based professionals - currently use some sort of e-prescribing program. The e-prescribing rate more than doubled in 47 states compared with last year, with Massachusetts having the highest e-prescribing activity at 57 percent.

## **AUTO HELP**

Automatic enrollment is helping younger workers reach their retirement goals, according to a survey by Financial Engines Inc. The company found that about 52 percent of workers under age 30 eligible for automatic enrollment in an investment option have the appropriate risk and diversification in investments for their age group. That compares with 12 percent of employees in that age group without access to this feature.

## **SALARIES HEAT UP**

A majority of employers who froze salaries over the past 18 months say they've lifted the freeze or plan to do so by the end of the year, according to a survey by Buck Consultants. Employees can expect to see an average salary increase of 2.8 percent in 2011, up from a 2.5 increase in 2010 and a 1.8 jump in 2008.



630 North Rosemead Blvd. • Suite 300 • Pasadena • California • 91107  
(626) 351-2300 • (626) 371-0447 Fax  
[www.garnerbenefits.com](http://www.garnerbenefits.com)